



STATE BOARD OF EQUALIZATION

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No. 79/15

January 18, 1979

TO COUNTY ASSESSORS:

PROPERTY LEASED TO AN EXEMPT ORGANIZATION

Senate Bill 2006 (Chapter 936) was chaptered on September 20, 1978, and added Section 202.2 to the Revenue and Taxation Code. As an urgency statute, it became effective on September 20, 1978. However, it does not affect property on the 1978-79 roll. Section 202.2 applies to taxes on leased real and personal property used by libraries, museums, public schools which include community colleges, state colleges, state universities, and the University of California and to private nonprofit colleges granted the exemption set forth in subdivision (d) or (e) of Section 3 of Article XIII of the California Constitution. Section 202.2 applies only to contracts and leases entered into on or subsequent to September 20, 1978. Therefore, Section 202.2 will first apply to property on the 1979-80 roll. Lessors who take options under the new statute may wish to make new contracts with lessees in your county; because many of the lessors are out of state, you may wish to inform each of them of the new law and establish a procedure for handling the property statement, exemption claim, and claim for refund.

Section 202.2 does not apply to property leased to an organization claiming the church (see Section 206.2 below), cemetery, welfare, or veterans' organization exemption.

The main concept of this statute is that any reduction in property taxes on leased property shall inure to the benefit of the lessee institution. Such a benefit can be derived in the following three ways:

1. The lessee receives a reduction in rental payments.
2. The lessee receives a refund from the lessor of a portion of the rental payment, if already paid, in an amount equal to the reduction in taxes.
3. The lessee may file a claim for refund of taxes paid with the county auditor under Section 5096 of the Revenue and Taxation Code. The statute provides that the lessee shall be deemed to be the person who paid the tax, and the refund shall be made directly to the lessee.

In order for a refund of taxes paid to be approved, the following events must occur:

- a. The property MUST have been enrolled.

(The benefit will not necessarily inure to the exempt institution just because an assessor does not enroll the property or because a lessor does not report the property. If a lease or rental agreement has not provided for the exemption and the lessor does not voluntarily refund the amount of taxes paid, there is no way short of court action to recover the benefit other than to receive the benefit by means of the claim for refund.)

- b. No exemption must have been allowed on the property even though the lessor or lessee has filed a claim for exemption.

(A claim for exemption must be on file, the property must have been eligible for exemption because of its use.)

- c. The lessor must have paid the taxes.

(If the lessor or the lessee claimed the exemption and it was allowed, there would be no taxes paid and thus no refund from the county.)

To facilitate a refund to a specific lessee by the county, property subject to one of these exemptions must be sufficiently identified as to assessed value to allow the determination of the taxes to be refunded. Preferably, each exempt property, or groups of exempt property, should be enrolled separately for easy identification.

A similar, but different, statute was enacted in 1977, effective January 1, 1978, that added Section 206.2, Revenue and Taxation Code. Section 206.2 states:

"Any reduction in property taxes on leased property used exclusively for religious worship and granted the church exemption shall inure to the benefit of the organization entitled to the exemption. If the lease or rental agreement does not specifically provide that the church exemption is taken into account in fixing the terms of the agreement, the tenant shall receive a reduction in rental payments, or a refund of such payments, if paid, for each month of occupancy, or portion thereof, during the fiscal year equal to one-twelfth of the property taxes not paid during such fiscal year by reason of the church exemption."

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This statute affects real and personal property leased to a church by means of a contract dated on or subsequent to January 1, 1978. This statute provides that the church exemption (not welfare or other exemption) must have been granted. The church may NOT CLAIM A REFUND BY FILING A CLAIM WITH THE COUNTY AUDITOR under the provisions of Section 5096 of the Revenue and Taxation Code. Three main points are, the benefit of such an exemption will only inure to the benefit of the church if:

- a) the property is used exclusively for religious worship and is granted the church exemption, and
- b) the lease agreement does not take the exemption into account, and
- c) the lessor provides the refund (the lessee may have to demand refund or rental adjustment directly from the lessor).

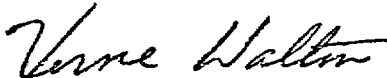
Assessors should use care where leased property is concerned and obtain a church exemption claim instead of the welfare exemption claim for property "used exclusively for religious worship" because refund benefits under Section 206.2 do not apply to welfare exempt property. The welfare exemption may be obtained for property owned by the church that is not used exclusively for worship. As in the past, leased property shown on the welfare claim should not be exempt.

Some major lessors have informed us that it is not practical for them to tailor their standard contracts. These lessors intend to pay the taxes on the exempt property and instruct their lessees to make claims for refund.

We suggest that assessors differentiate between the lessors who will pay the tax, and other lessors who will claim an exemption. Also, you may wish to contact an eligible lessee who claims an exemption on leased equipment to determine if the lessee would rather file for the refund.

If you have any questions concerning the exemption or procedures, contact Bill Grommet of this division.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

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